

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE PRESIDING

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TRADELINER ENTERPRISES PVT. LTD.,)
)
)
PLAINTIFF,)
)
VS.) CV115-08048-JAK
)
JESS SMITH & SONS, LLC, ET AL.,)
)
)
DEFENDANTS.)
)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, APRIL 4, 2016; 8:30 AM

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LOS ANGELES, CALIFORNIA; MONDAY, APRIL 4, 2016

8:30 AM

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6 THE COURT: ITEM NO. 5, CV15-08048, TRADELINE
7 ENTERPRISES V. JESS SMITH & SONS COTTON.

8 MR. SUPRENANT: GOOD MORNING, YOUR HONOR.

9 DOMINIC SUPRENTANT FOR THE PLAINTIFF.

10 MR. DUCKERS: GOOD MORNING, YOUR HONOR. ED
11 DUCKERS FOR DEFENDANT JESS SMITH & SONS COTTON.

12 MR. SLATTERY: GOOD MORNING, YOUR HONOR. PAUL
13 SLATTERY FOR PLAINTIFF.

14 MR. WOODS: GOOD MORNING, YOUR HONOR. DAN
15 WOODS FOR DEFENDANT J.G. BOSWELL COMPANY.

16 THE COURT: GOOD MORNING. JUST A MINUTE.

17 WE'RE HERE ON A SERIES OF MOTIONS, AS
18 WELL AS THE SCHEDULING CONFERENCE.

19 I THINK THE CORE ISSUES IN THE MOTIONS --
20 THAT ARE PRESENTED BY THE MOTIONS ARE THE RULE 19
21 ISSUE, INDISPENSABLE PARTY, AND THE MOTION TO -- AND
22 THE ARBITRABILITY ISSUE.

23 THE MOTION TO DISMISS RAISES SOME ISSUES,
24 BUT I DON'T -- DEPENDING ON THE OUTCOME OF THE FIRST
25 TWO, IT MAY OR MAY NOT BE NECESSARY TO REACH THEM.

5 I THINK THAT THE NINTH CIRCUIT'S DECISION
6 IN WARD VERSUS APPLE IS INSTRUCTIVE, 791 F.3D 1041, AN
7 ANTITRUST CASE. APPLE AND THE TELEPHONE COMPANY WERE
8 BOTH -- ONLY APPLE WAS NAMED, NOT THE PROVIDER, AT&T.
9 AND I THINK THE ANALYSIS IS QUITE COMPARABLE HERE.

10 SUBJECT TO MY UNDERSTANDING FROM THE
11 PLAINTIFF THAT IT WOULDN'T -- IT WOULD NOT -- THAT --
12 I'LL HEAR FROM THE PLAINTIFF ON ITS POSITION AS TO
13 WHETHER, IF THERE WERE SUCH A PROCEEDING HERE, AND IF
14 IT WERE DETERMINED THAT THERE WERE LIABILITY HERE AS TO
15 THESE DEFENDANTS, WHAT IS DEFENDANT'S POSITION -- WHAT
16 IS PLAINTIFF'S POSITION AS TO WHETHER THAT WOULD HAVE
17 ANY POSSIBLE COLLATERAL ESTOPPEL EFFECT ON SUPIMA
18 ASSOCIATION?

19 AND IF YOU'RE PREPARED TO SAY IT WOULD
20 HAVE NONE, THEN I THINK THAT WOULD ALSO BE CONSISTENT
21 WITH THE RATIONALE OF THE AT&T MATTER.

22 THE DIFFERENCE BEING THE FACTUAL
23 DIFFERENCE BETWEEN AT&T AND THE SUPIMA ASSOCIATION,
24 GIVEN THE ROLE THAT CERTAIN OTHER DEFENDANTS HAVE WITH
25 SUPIMA, INCLUDING ONE DEFENDANT SERVING AS ITS CHAIR.

1 WITH RESPECT TO THE ARBITRATION ISSUE,
2 YOU AGREE ON CERTAIN THINGS, THAT ARIZONA LAW APPLIES
3 TO DETERMINE THE DOCTRINE OF WHETHER A NON-SIGNATORY --
4 WHETHER A DEFENDANT WHO IS NOT A SIGNATORY CAN SEEK TO
5 REQUIRE A PLAINTIFF WHO IS A SIGNATORY TO AN AGREEMENT
6 WITH AN ARBITRATION CLAUSE TO ARBITRATE AS TO -- TO
7 ARBITRATE. AND YOU AGREE THAT ARIZONA LAW APPLIES.

8 AND THERE ARE ARIZONA COURT OF APPEAL
9 DECISIONS ON THIS ISSUE, THE ESTOPPEL BEING PRESENTED
10 IN DIFFERENT FORMS. THOSE DECISIONS, INCLUDING THE SUN
11 VALLEY RANCH DECISION, IN CONDUCTING AN ANALYSIS OF
12 ARIZONA LAW, HAVE LOOKED TO FEDERAL COURTS OF APPEAL
13 WHICH HAVE BEEN APPLYING THE SAME DOCTRINE, NOT UNDER
14 ARIZONA LAW, BUT UNDER THE LAWS OF DIFFERENT STATES AND
15 AS WELL AS UNDER THE FEDERAL ACT.

16 WHAT YOU DIDN'T DISCUSS IN YOUR BRIEFS
17 ARE SOME CASES THAT I THINK ARE ACTUALLY IMPORTANT ON
18 THAT ISSUE. AND THEY INCLUDE THE PRM CASE FROM THE
19 EIGHTH CIRCUIT, 592 F.3D 830, AN EIGHTH CIRCUIT
20 DECISION FROM 2010; ANOTHER EIGHTH CIRCUIT DECISION,
21 WHOLESALE, 707 F.3D. 919, A DECISION FROM THE EIGHTH
22 CIRCUIT IN 2013. THERE'S THE FOURTH CIRCUIT CASE IN
23 AMERICAN BANKERS, 453 F.3D 623, WHICH I THINK, ALSO, IS
24 SIGNIFICANT. AND EACH OF THOSE CASES CITES OTHER
25 FEDERAL CIRCUIT CASES, INCLUDING CASES FROM THE SECOND

1 CIRCUIT ON THIS ISSUE. AND, AS I SAY, YOU HAVEN'T
2 BRIEFED THOSE CASES. AND I DON'T KNOW IF YOU'RE
3 FAMILIAR WITH THEM.

4 ARE YOU FAMILIAR WITH THEM?

5 MR. SUPRENANT: YOUR HONOR, AMERICAN BANKERS
6 WAS CITED IN THE REPLY. AND I AM PREPARED TO DISCUSS
7 IT.

8 THE COURT: HOW ABOUT THE PRM CASE?

9 MR. SUPRENANT: I AM NOT FAMILIAR WITH THOSE
10 CASES, YOUR HONOR.

11 THE COURT: AND THE WHOLESALE CASE?

12 MR. SUPRENANT: I DO NOT BELIEVE THAT WAS
13 CITED BY EITHER PARTY.

14 THE COURT: I THINK NOT.

15 ARE YOU FAMILIAR WITH THE PRM CASE?

16 MR. DUCKERS: I AM NOT, YOUR HONOR, OR THE
17 WHOLESALE CASE.

18 THE COURT: ALL RIGHT. THANK YOU.

19 I THINK THE CASES TALK ABOUT THE
20 EQUITABLE ESTOPPEL DOCTRINE, AND THEY GIVE VARIOUS
21 STANDARDS.

22 IN THE AMERICAN BANKERS CASE, WHICH
23 INVOLVED THE PROMISSORY NOTE SOLD TO INVESTORS, IN THE
24 ARBITRATION CLAUSE, THEY WERE SOLD BY AN ENTITY THAT
25 HAD SOLD THE INSURANCE POLICIES IN CONNECTION WITH

1 AMERICAN BANKERS, WHICH HAD AGREED TO UNDERWRITE THEM.
2 AND YOU'RE AWARE OF THE FACTS THERE.

3 AND THERE'S -- YOU KNOW, YOU CAN TAKE
4 DIFFERENT POSITIONS ON HOW TO APPLY THAT CASE, BUT I
5 THINK IT NEEDS TO BE LOOKED AT IN CONNECTION WITH THESE
6 OTHER CASES TO WHICH I'VE REFERRED. AND, THEREFORE, I
7 WOULD LIKE TO GET YOUR INPUT.

8 IN THE PRM CASE, FOR EXAMPLE, A LICENSOR
9 ENTERED AN AGREEMENT WITH THE LICENSEE. AND THERE WAS
10 A DISPUTE ABOUT WHAT THE SCOPE OF THAT LICENSE
11 AGREEMENT WAS. WELL, IT WASN'T A "DISPUTE." THERE
12 WERE CERTAIN PARTS OF THAT LICENSE AGREEMENT LIMITING
13 ITS GEOGRAPHIC SCOPE. THE LICENSEE ENTERED AN
14 AGREEMENT WITH ANOTHER -- WITH ANOTHER PARTY THAT WAS
15 IN A GEOGRAPHIC AREA THAT WAS, ARGUABLY, NOT WITHIN THE
16 SCOPE OF THE ORIGINAL LICENSE. A DISPUTE AROSE. AND
17 THAT LICENSEE WAS SUED. AND THAT NEW PARTY WAS SUED
18 AND SOUGHT TO REQUIRE THE PLAINTIFF/LICENSOR TO
19 ARBITRATE CONSISTENT WITH THAT ARBITRATION AGREEMENT
20 THAT WAS JUST PART OF THE ORIGINAL LICENSING AGREEMENT.
21 AND THE EIGHTH CIRCUIT CONCLUDED THAT IT WAS REQUIRED
22 TO ARBITRATE.

23 THE EIGHTH CIRCUIT DISTINGUISHED THAT
24 CASE AND THE WHOLESALE CASE, WHICH IS AN ANTITRUST CASE
25 INVOLVING PURCHASERS OF FOOD MERCHANDISE -- RETAILERS

1 OF FOOD MERCHANDISE, SAYING THERE WAS A CONSPIRACY
2 AMONG THOSE WHO PROVIDED THE FOOD PRODUCTS TO THEM.
3 AND EACH -- EACH OF THE FOOD PROVIDERS HAD AN AGREEMENT
4 WITH THE RETAILER PLAINTIFFS. AND THE AGREEMENTS
5 CONTAINED ARBITRATION CLAUSES. THE INDIVIDUAL
6 PLAINTIFFS ELECTED TO SUE THE DEFENDANTS WITH WHOM THEY
7 DID NOT HAVE AGREEMENTS. SO THEY SUED OTHER ALLEGED
8 CO-CONSPIRATORS. AND THE EIGHTH CIRCUIT DISTINGUISHED
9 PRM THERE BASED ON THE -- AS YOU'LL SEE WHEN YOU READ
10 IT.

11 I THINK THAT THE MOST EFFICIENT WAY TO
12 PROCEED IS TO GET SOME SUPPLEMENTAL BRIEFING WITH
13 RESPECT TO YOUR RESPECTIVE VIEWS ON THESE CASES BECAUSE
14 I THINK THEY'RE SIGNIFICANT IN THEIR APPROACH.

15 AGAIN, THEY'RE NOT CONTROLLING ARIZONA
16 LAW; BUT, AS I STATED, THE ARIZONA COURTS OF APPEAL
17 HAVE LOOKED TO FEDERAL AUTHORITY ON THIS. SO I THINK
18 THAT'S THE WAY -- I THINK THAT'S GOING TO BE THE MOST
19 EFFICIENT WAY TO PROCEED.

20 THAT WAY, I'M NOT GOING TO ISSUE AN ORDER
21 ANALYZING CASES THAT YOU HAVEN'T LOOKED AT.

22 AND IF YOU FIND OTHER CASES THAT YOU
23 THINK ARE IMPORTANT, YOU'LL TELL ME.

24 AND, TO BE CLEAR ABOUT THIS, I
25 RECOGNIZE -- I UNDERSTAND -- I HAVE READ THESE CASES.

1 SO I RECOGNIZE THAT THE WHOLESALE CASE IS AN ANTITRUST
2 CASE. I KNOW THAT. AND I RECOGNIZE THAT IT
3 DISTINGUISHES THE PRM CASE. AND I KNOW THAT THE PRM --
4 THEY'RE FROM THE SAME CIRCUIT.

5 SO TO BE HELPFUL HERE, I THINK WHAT YOU
6 NEED TO DO IS TO GIVE ME NOT JUST, "OH, WELL, THIS
7 CASE" -- "THE EIGHTH CIRCUIT DISTINGUISHED THAT CASE."

8 I THINK YOU HAVE TO REALLY CAREFULLY
9 THINK ABOUT IT IN THE CONTEXT OF THE ALLEGATIONS THAT
10 ARE MADE IN THE COMPLAINT HERE, WHICH ARE QUITE
11 DETAILED WITH RESPECT TO THE ROLE OF SUPIMA
12 ASSOCIATION -- ALLEGED ROLE OF SUPIMA ASSOCIATION.
13 THAT'S WHAT I NEED.

14 I HAVE READ THE CASES, BUT I NEED YOU TO
15 GIVE ME YOUR RESPECTIVE VIEWS ON HOW THEY APPLY IN
16 LIGHT OF, NOT JUST THOSE TWO CASES, BUT, AS I SAID,
17 THERE'S A SERIES OF CASES FROM DIFFERENT CIRCUITS THAT
18 ARE OFTEN CITED THAT LOOK AT THIS. SO THAT'S WHAT I
19 THINK WOULD BE THE MOST EFFICIENT.

20 SO BEFORE I -- THAT'S MY TENTATIVE
21 THINKING.

22 MR. SUPRENANT, LET ME HEAR FROM YOU ON
23 THAT.

24 MR. SUPRENANT: WOULD IT BE THE MOTION TO
25 COMPEL OR THE 12(B)(7) ISSUE?

1 THE COURT: WELL, EITHER ONE. IT'S THE MOTION
2 TO COMPEL -- IT'S THE ARBITRATION ISSUE. I THINK THE
3 TWO ISSUES THAT I SAID ARE SIGNIFICANT ARE THE
4 INDISPENSABLE PARTY ISSUE. IF I WERE TO CONCLUDE THAT
5 SUPIMA ASSOCIATION IS AN INDISPENSABLE PARTY, THEN
6 THERE'S AN ARBITRATION PROVISION.

7 TO BE CLEAR, THERE ARE TWO DIFFERENT
8 ARBITRATION AGREEMENTS. THERE'S THE ARBITRATION
9 AGREEMENT THAT'S PART OF THE LICENSING AGREEMENT, AND
10 THEN THERE ARE OTHER -- THERE'S THEN -- WHEN THE
11 SUPPLIERS -- IN THE CONTRACTS BETWEEN PLAINTIFF AND
12 THOSE TO WHOM PLAINTIFF SELLS, THERE'S AN ARBITRATION
13 STATEMENT. I THINK THERE ARE TWO DIFFERENT AGREEMENTS.

14 I'M FOCUSING ON THE ARBITRATION AGREEMENT
15 IN THE SUPIMA LICENSING AGREEMENT.

16 I'M NOT FOCUSING -- I AM NOT PERSUADED,
17 AT THIS POINT, THAT THE OTHER ONE-SENTENCE STATEMENT
18 ABOUT ARBITRABILITY OF DISPUTES OVER GOODS PURCHASED
19 AND SOLD IS COMPELLING. I THINK -- I DON'T THINK
20 IT'S -- I DON'T THINK THAT'S THE ISSUE.

21 SO THE POINTS ARE, ONE, RULE 19, WHERE MY
22 TENTATIVE VIEW WOULD BE THAT SUPIMA IS NOT A NECESSARY
23 PARTY AND SUBJECT TO THE ISSUE I STATED AS TO
24 COLLATERAL ESTOPPEL.

25 AND, SECOND, ON ARBITRABILITY, THE

1 OBLIGATION OF A NON -- OF THE PLAINTIFF, WHO IS A
2 SIGNATORY, TO ARBITRATE NOTWITHSTANDING THAT THE
3 PLAINTIFF HAS NOT SUED THE PARTY -- SUED THE ENTITY
4 WITH WHOM IT CONTRACTED, BUT HAS SUED OTHERS WHO HAVE A
5 LINKS TO THAT ENTITY.

6 MR. SUPRENANT: YES, YOUR HONOR.

7 FIRST, I THINK UNDER THE WARD V. APPLE
8 CASE, THAT IT HOLDS THAT THERE CANNOT BE ISSUE
9 PRECLUSION FLOWING FROM A LITIGATION IN WHICH
10 T-MOBILE -- IT WAS AT&T. AT&T WAS NOT A PARTY. I
11 WOULD NOT ARGUE THAT -- I DON'T THINK THEY CAN HAVE
12 ISSUES PRECLUDED BECAUSE THEY'RE NOT A PARTY. THEY'RE
13 NOT REPRESENTED. AND I THINK THAT IS CONSISTENT WITH
14 THE PRETTY CLEAR HOLDING IN WARD VERSUS APPLE JUST LAST
15 YEAR. SO I DO NOT THINK THEY ARE A NECESSARY PARTY. I
16 THINK WARD VERSUS APPLE CONTROLS.

17 THE COURT: ARE YOU PREPARED -- WOULD YOU BE
18 PREPARED TO STIPULATE THAT THERE WOULD BE NO COLLATERAL
19 ESTOPPEL EFFECT?

20 MR. SUPRENANT: I WOULD BE, BUT I WOULD HAVE
21 TO DISCUSS WITH MY CO-COUNSEL AND MY CLIENT. BUT I
22 THINK, AS A PRELIMINARY MATTER, I WOULD BE WILLING TO
23 SO STIPULATE, YOUR HONOR.

24 THE COURT: I UNDERSTAND.

25 GO AHEAD.

1 MR. SUPRENANT: WITH RESPECT TO THE MOTION TO
2 COMPEL ARBITRATION, I DON'T WANT TO SWIM UPSTREAM
3 AGAINST YOUR HONOR'S TENTATIVE.

4 THE COURT: I DIDN'T SAY A "TENTATIVE." I
5 DIDN'T STATE ONE.

6 MR. SUPRENANT: THANK YOU, YOUR HONOR.

7 THE COURT: I DON'T THINK I DID.

8 DID I STATE IT?

9 I DON'T THINK I STATED A TENTATIVE VIEW
10 ON THAT, OTHER THAN THAT I WANTED YOU TO ADDRESS THESE
11 CASES, WHICH WENT IN DIFFERENT DIRECTIONS.

12 MR. SUPRENANT: BY A "TENTATIVE," I WAS BEING
13 IMPRECISE. I MEANT YOUR HONOR'S COMMENTS.

14 THE FIRST THING I WOULD SAY IS,
15 PLAINTIFFS (SIC) BEAR THE BURDEN. AND IF THEY LOSE ON
16 THE CASES THEY HAVE IDENTIFIED, WHICH I THINK THEY
17 DO -- I WILL BE PERFECTLY AT YOUR HONOR'S PLEASURE TO
18 BRIEF THOSE ADDITIONAL CASES. BUT MY FIRST ARGUMENT
19 WOULD BE, UNDER THE CASES THEY CITE, THEY LOSE, I THINK
20 WE SHOWED IN OUR OPPOSITION.

21 THEY DID, YOUR HONOR, IN THE REPLY, CITE
22 A NEW CASE, ONE OF THE THREE CASES YOUR HONOR
23 DISCUSSED, WHICH IS THE AMERICAN BANKERS. AND I HAD
24 THAT DECISION BECAUSE I THINK IT'S IMPORTANT BECAUSE IT
25 REALLY IS IN LINE WITH -- IT IS IN LINE WITH THE

1 ARGUMENT THAT WE MADE. AND I PULLED IT OUT BECAUSE I
2 HAVE IT HERE WITH ME, YOUR HONOR.

3 THE COURT: I HAVE IT.

4 MR. SUPRENANT: AND I MANAGED TO LOSE IT.

5 IT'S RIGHT HERE, YOUR HONOR.

6 IT'S COMPLETELY CONSISTENT -- IN OUR
7 OPPOSITION, WE SAID, UNDER THE EQUITABLE ESTOPPEL CASES
8 THAT THEY HAD CITED, IF WE HAD SUED MR. LEWKOWITZ AND
9 MR. CURLEE, THE EXECUTIVE VICE PRESIDENT AND THE
10 PRESIDENT OF THE ASSOCIATION, THEY COULD SAY, "LOOK,
11 WE'RE NOT SIGNATORIES TO THIS, BUT YOU WERE ATTEMPTING
12 TO FIND LIABILITY AGAINST US BASED ON OUR CONDUCT UNDER
13 THAT CONTRACT." AND I THINK THAT WOULD BE AN
14 APPROPRIATE USE OF EQUITABLE ESTOPPEL.

15 THEY CITE A RELATED CASE -- AND WE
16 ADMITTED THAT. WE SAID IN THE OPPOSITION, IF YOU WERE
17 TRYING TO ESTABLISH LIABILITY AGAINST THE DEFENDANT, A
18 NON-SIGNATORY, BASED ON HIS OR HER OBLIGATIONS OR
19 PERFORMANCE UNDER THE CONTRACT THAT GIVES RISE TO THE
20 ARBITRATION, THEN EQUITABLE ESTOPPEL APPLIES.

21 AND I THINK, YOUR HONOR, THE AMERICAN
22 BANKERS CASE IS REALLY CONSISTENT WITH THAT BECAUSE THE
23 HOLDING IN THAT CASE - AND I'M READING AT 453 F.3D. AT
24 628 - "ESTOPPEL IS APPROPRIATE, IF" - AND THEY'RE
25 QUOTING ANOTHER AUTHORITY - "IN SUBSTANCE, THE

1 SIGNATORY'S UNDERLYING COMPLAINT, " THAT WOULD BE
2 TRADELINE, " IS BASED ON THE NON-SIGNATORY'S, " THAT
3 WOULD BE THE DEFENDANTS, " ALLEGED BREACH OF THE
4 OBLIGATIONS AND DUTIES ASSIGNED TO IT UNDER THE
5 AGREEMENT, " CITING SUNKIST.

6 WE DO NOT ALLEGE THAT J.G. BOSWELL OR
7 JESS SMITH'S LIABILITY ARISES UNDER THEIR FAILURE UNDER
8 BREACHES OF OBLIGATIONS AND DUTIES UNDER THE SUPIMA
9 LICENSE AGREEMENT. SO I THINK AMERICAN BANKERS, YOUR
10 HONOR, IS PERFECTLY CONSISTENT WITH THE OPPOSITION --
11 WITH OUR ARGUMENT IN THE OPPOSITION.

12 THE COURT: ONE OF THE THINGS ALLEGED IN THE
13 COMPLAINT IS THAT THE SUPIMA LICENSING AGREEMENT WAS
14 UNILATERALLY AND IMPROPERLY CHANGED TO PERMIT A
15 TERMINATION WITHOUT THE OPPORTUNITY FOR AN ANALYSIS OF
16 THE SUPIMA.

17 MR. SUPRENANT: THAT'S CORRECT.

18 BUT THAT IS NOT AN OBLIGATION OR DUTY
19 WITH RESPECT TO THE DEFENDANTS.

20 THE COURT: NO, I UNDERSTAND.

21 BUT IT'S AN OBLIGATION OR DUTY THAT IS
22 PART OF THE COMPLAINT, ISN'T IT, OF THE ORGANIZATION?

23 MR. SUPRENANT: WHAT WE SAY IS THAT, PART OF
24 THE CONSPIRACY WAS TO DEPRIVE US OF PROCEDURAL
25 PROTECTIONS WE HAD UNDER THE LICENSE. THAT'S CORRECT,

1 YOUR HONOR.

2 BUT THERE IS NO OBLIGATION THAT THE
3 LICENSE AGREEMENT IMPOSES ON THE DEFENDANTS. IT'S NOT
4 LIKE WE CAN SAY THE QUOTE I JUST READ FROM AMERICAN
5 BANKERS. OUR CLAIM DOES NOT ARISE FROM ANY OBLIGATION
6 THEY HAD.

7 NOW, WE WOULD -- IF MY CLIENT HAD MORE
8 RESOURCES AND THE SUPIMA ASSOCIATION HAD MORE WORTH, WE
9 WOULD PURSUE THEM IN ARBITRATION; BUT THE ECONOMICS
10 DON'T MAKE ANY SENSE.

11 BUT I DON'T THINK THE DEFENDANTS HAVE ANY
12 ARGUMENT -- EQUITABLE ESTOPPEL ARGUMENT THAT IS
13 SUPPORTED BY THE CASE LAW. IT'S NOT SUPPORTED BY
14 SUNKIST. AND I DON'T THINK IT'S SUPPORTED BY AMERICAN
15 BANKERS.

16 THE COURT: IF THE LICENSE HAD NEVER BEEN
17 TERMINATED, WOULD THE CURRENT CLAIMS BE VIABLE?

18 MR. SUPRENANT: IF THE LICENSE HAD NEVER BEEN
19 TERMINATED --

20 THE COURT: WOULD THE CURRENT CLAIMS BE
21 VIABLE?

22 MR. SUPRENANT: NO. IF WE HAD NEVER -- WELL,
23 LET ME TAKE THAT BACK.

24 KNOWING WHAT WE KNOW NOW, YOUR HONOR,
25 HAVING TAKEN VERY LITTLE DISCOVERY, THERE WAS AN

1 ORGANIZED CAMPAIGN OF DISPARAGEMENT -- FALSE
2 DISPARAGEMENT THAT PREVENTED US FROM GETTING AN
3 ENORMOUSLY VALUABLE CUSTOMER THAT J.G. BOSWELL NOW
4 SERVES, AND WE THINK EITHER PRINCIPALLY OR EXCLUSIVELY.

5 THE COURT: IS THAT A SECTION 1 CLAIM?

6 MR. SUPRENANT: THAT WOULD BE A SECTION 1
7 CLAIM -- I'M THINKING ON MY FEET, YOUR HONOR.

8 I THINK THERE WOULD BE A CONSPIRACY
9 CLAIM. I THINK IT WOULD CHANGE THE CONTOURS OF THE
10 COMPLAINT.

11 BUT THE LICENSE BEING TERMINATED, AS WE
12 ALLEGED AND CAN PROVE, LED TO ESSENTIALLY THE
13 IMMEDIATE --

14 THE COURT: NO, THAT'S WHAT I'M FOCUSING ON.
15 THAT'S -- ALL RIGHT.

16 MR. SUPRENANT: AND THEY CITED ANOTHER CASE,
17 YOUR HONOR, IN THEIR REPLY, THE GRIGSON VERSUS CREATIVE
18 ARTIST AGENCY, 210 F.3D 524, FIFTH CIRCUIT 2000.
19 THERE, IT'S THE SAME EXACT PRINCIPLE THAT THE -- AS THE
20 AMERICAN BANKERS CASE. IT STATES AT 528 THAT A
21 PLAINTIFF, THAT'S US, TRADELINE, CANNOT ON THE ONE HAND
22 SEEK TO HOLD THE NON-SIGNATORE LIABLE PURSUANT TO THE
23 DUTIES IMPOSED BY THE AGREEMENT. NO PART OF OUR
24 COMPLAINT SAYS THERE WERE DUTIES IMPOSED BY THE LICENSE
25 AGREEMENT ON THE DEFENDANTS.

1 SO I THINK, AT THIS POINT, YOUR HONOR,
2 THE MOTION SHOULD BE DENIED BECAUSE PLAINTIFFS (SIC)
3 HAVE FAILED TO CITE ANY AUTHORITY THAT SUPPORTS IT.

4 THE COURT: ALL RIGHT. I UNDERSTAND.

5 BUT I WANT YOU TO ADDRESS THE CASES THAT
6 I HAVE FOCUSED ON.

7 MR. SUPRENANT: YES, YOUR HONOR.

8 THE COURT: I'M NOT GOING TO IGNORE THEM. SO
9 I -- IN OTHER WORDS, I'M NOT GOING TO JUST -- I JUST --
10 MAYBE YOU'LL BOTH CONCLUDE THAT THE CASES TO WHICH I
11 HAVE REFERRED DON'T APPLY. AND THAT'S FINE. BUT I
12 WOULD LIKE TO HEAR YOUR VIEWS ON THAT BEFORE I DECIDE
13 THE ISSUE.

14 MR. SUPRENANT: YES, YOUR HONOR.

15 JUST INDICATE A SCHEDULE, AND WE WILL
16 COMPLY.

17 THE COURT: THANK YOU.

18 MR. SUPRENANT: THANK YOU, YOUR HONOR.

19 MR. DUCKERS: THANK YOU, YOUR HONOR. ED
20 DUCKERS FOR JESS SMITH. IF IT PLEASE THE COURT, I'LL
21 BE VERY BRIEF.

22 WITH RESPECT TO THE 12(B)(7) MOTION TO
23 DISMISS AND THE APPLICATION OF THE WARD CASE TO THE
24 FACTS HERE, LET ME JUST POINT OUT A COUPLE OF
25 DISTINGUISHING FACTORS BECAUSE I DON'T THINK WARD

1 APPLIES.

2 AND JUST AS A STARTING POINT, LET'S BEAR
3 IN MIND, WARD IS A CONSUMER CLASS ACTION WHERE THE
4 CONSUMERS SIGNED BOILERPLATE ARBITRATION CLAUSES. IT
5 WAS THE PLAINTIFF'S THIRD CRACK AT TRYING TO GET AROUND
6 THE ARBITRATION PROVISIONS IN THE AT&T CONTRACT BY
7 ARTFULLY PLEADING IT SUCH THAT APPLE COULD ONLY BE THE
8 DEFENDANT.

9 THAT'S QUITE DIFFERENT, YOUR HONOR, THAN
10 THIS CIRCUMSTANCE WHERE YOU ARE DEALING WITH A
11 SOPHISTICATED INTERNATIONAL PLAINTIFF DOING BUSINESS IN
12 THIS CASE AND WITH A TRADE ASSOCIATION.

13 BUT MORE FUNDAMENTALLY --

14 THE COURT: WHY DOES THAT MATTER IN TERMS OF
15 ANALYZING THE ANTITRUST ISSUE?

16 MR. DUCKERS: I THINK IT PUTS IT INTO CONTEXT.

17 NOW LET ME NOW TALK ABOUT THE ANTITRUST
18 ISSUES. IT'S SORT OF A PRACTICAL OBSERVATION, YOUR
19 HONOR, THAT, IN WARD, YOU HAD THE NINTH CIRCUIT LOOKING
20 AT A CONSUMER CLASS ACTION. THAT BECAUSE OF
21 ARBITRATION CLAUSES AND CLASS WAIVERS IN THEM, IT
22 EFFECTIVELY WOULD HAVE BEEN DEAD. IT COULDN'T HAVE
23 BEEN ARBITRATED. IT WOULD NOT -- IT WOULD NOT HAVE
24 BEEN ECONOMIC TO ARBITRATE THEM, UNLIKE THIS CASE WHERE
25 IT CLEARLY WOULD BE ECONOMIC TO ARBITRATE THIS CASE FOR

1 TRADELINE. THEY SOUGHT TO ARBITRATE THIS CASE THREE
2 YEARS AGO AND THEN ABANDONED THAT EFFORT.

3 THE COURT: WARD DOESN'T SAY THAT, DOES IT?

4 MR. DUCKERS: EXCUSE ME?

5 THE COURT: THE APPLE CASE DOESN'T SAY THAT,
6 DOES IT?

7 MR. DUCKERS: NO.

8 I MEAN, IT DOESN'T SAY IT IN SO MANY
9 WORDS, BUT IT DESCRIBES THE NATURE OF THE CASE.

10 THE COURT: OKAY. GO AHEAD.

11 MR. DUCKERS: AND I'M JUST SPEAKING AS A
12 PRACTICAL LAWYER UNDERSTANDING THE IMPLICATIONS OF
13 THAT.

14 THE COURT: I UNDERSTAND THE ARGUMENT. I JUST
15 WANTED TO MAKE SURE I -- WE WERE CLEAR THAT IT WAS AN
16 ASSUMPTION ABOUT HOW THE CASE SHOULD BE APPLIED AS
17 OPPOSED TO SOMETHING THE CASE SAID.

18 MR. DUCKERS: IT IS AN INTERPRETATION OF THE
19 CASE IN LIGHT OF THE FACTS.

20 THE COURT: OKAY.

21 MR. DUCKERS: YOUR HONOR, IN THE NINTH
22 CIRCUIT, THE ONLY ARGUMENT THAT WAS MADE AS TO HOW AT&T
23 WOULD BE HURT OR HARMED BY THE CASE GOING FORWARD, WHY
24 IT WOULD CLAIM AN INTEREST IS, IT WOULD BE SUBJECT TO
25 ADDITIONAL REGULATORY SCRUTINY UNDER THE ANTITRUST

1 LAWS, AND THAT IT WOULD SUFFER SOME SORT OF
2 REPUTATIONAL DAMAGE.

3 AND THE HOLDING OF WARD IS REALLY VERY
4 LIMITED WHERE THE NINTH CIRCUIT SAYS, THAT'S NOT ENOUGH
5 TO CLAIM AN INTEREST IN A CASE. THAT HAS NO
6 APPLICATION HERE.

7 SUPIMA'S BUSINESS IS THE PROMOTION OF THE
8 SUPIMA BRAND. IT IS AN ORGANIZATION OF COTTON GROWERS
9 WHO GROW AMERICAN EXTRA-LONG STAPLE COTTON, WHICH IS
10 BRANDED "SUPIMA" AND MARKETED AROUND THE WORLD.

11 DAMAGE TO THE SUPIMA BRAND ISN'T
12 REPUTATIONAL DAMAGE TO SUPIMA ASSOCIATION. IT GOES TO
13 THE HEART OF THE REASON FOR THE ASSOCIATION'S
14 EXISTENCE. IT'S ABSOLUTELY DEVASTATING.

15 IF IT CAN'T CONTROL WHO OPERATES USING
16 THAT BRAND, IT RISKS COMPLETELY DEVALUING THE BRAND AND
17 DESTROYS ITS BUSINESS.

18 WE'RE NOT HERE ADVANCING THE SORT OF THIN
19 AND FLIMSY ARGUMENTS THAT APPLE WAS ADVANCING FOR WHY
20 AT&T SHOULD BE INCLUDED IN THAT CASE.

21 WE'RE HERE SAYING TO THE COURT, YOUR
22 HONOR, THIS GOES TO THE VERY HEART OF THE REASON FOR
23 THE SUPIMA ASSOCIATION'S EXISTENCE. IT'S WHAT IT DOES.
24 IT HAS TO PROTECT THE BRAND. IT TERMINATED TRADELINE'S
25 LICENSE, AS WE POINT OUT IN THE MATERIALS, BECAUSE IT

1 WAS SELLING ADULTERATED PRODUCT AND BECAUSE IT
2 DEFAULTED ON CONTRACTS. AND THOSE ARE THE SORTS OF
3 ACTIONS THAT A TRADE ASSOCIATION TAKES TO PROTECT THE
4 VALUE OF ITS BRAND AND TO PROTECT ITS MEMBERS. AND IF
5 THAT IS TAKEN AWAY FROM IT IN A PIECE OF LITIGATION, AS
6 COULD HAPPEN HERE, THEN IT IS BEING SIGNIFICANTLY
7 INJURED.

8 THE COURT: JUST A MINUTE.

9 LET ME MAKE SURE I UNDERSTAND SOMETHING.
10 IN THE PRAYER FOR RELIEF IN A COMPLAINT, IS IT YOUR
11 POSITION THAT THAT'S SEEKING RELIEF OTHER THAN MONETARY
12 RELIEF?

13 MR. DUCKERS: IT ASKS FOR SUCH OTHER AND
14 FURTHER RELIEF AS THE COURT MIGHT BE WILLING TO GRANT.
15 SO IT GOES BEYOND MONETARY RELIEF.

16 WHETHER THEY'RE GOING TO ASK THIS COURT
17 TO ORDER SUPIMA TO REINSTATE THEIR LICENSE, I DON'T
18 KNOW.

19 THE COURT: WHAT I WANT TO UNDERSTAND WITH
20 RESPECT TO YOUR ARGUMENT IS, THE INJURY TO SUPIMA THAT
21 YOU -- IN OTHER WORDS, YOU ARE CONTENDING THAT SUPIMA
22 IS IN FACT AN INDISPENSABLE PARTY UNDER RULE 19.

23 MR. DUCKERS: YES, YOUR HONOR.

24 THE COURT: WHAT I WANT TO UNDERSTAND -- MAKE
25 SURE I HAVE A CLEAR UNDERSTANDING OF IS, WHAT IS THE

1 INJURY TO SUPIMA THAT YOU CONTEND WOULD -- LET'S
2 SUPPOSE, HYPOTHETICALLY, THAT THE PLAINTIFFS STIPULATE
3 THEY WILL NOT BE SEEKING MONETARY RELIEF FROM SUPIMA.

4 WHAT INJURY TO SUPIMA WOULD RESULT IF THE
5 PLAINTIFF PREVAILS ON THE ANTITRUST CLAIMS?

6 MR. DUCKERS: WELL, THE INJURY TO SUPIMA THAT
7 WOULD RESULT WOULD BE IF THEY WERE, IN ONE WAY OR
8 ANOTHER, FORCED TO RENEW TRADELINE'S LICENSE.

9 AND I DON'T KNOW THAT MR. SUPRENTAN CAN
10 STAND IN THIS COURTROOM TODAY AND SIMPLY AS A LAWYER
11 STIPULATE THAT, SOME DAY DOWN THE ROAD, TRADELINE WOULD
12 NOT TAKE A VERDICT IN THIS CASE AND WALK INTO A COURT
13 IN ARIZONA AND SAY, "YOU ARE COLLATERALLY ESTOPPED FROM
14 EVEN LITIGATING THIS CASE BECAUSE YOU ARE A
15 CO-CONSPIRATOR. AS FOUND IN THIS VERDICT, YOU ARE IN
16 PRIVITY WITH THE DEFENDANTS. YOUR INTERESTS WERE
17 ABSOLUTELY REPRESENTED."

18 I DON'T THINK -- I MEAN, I WOULD WELCOME
19 THE STIPULATION, BUT I DON'T THINK A STIPULATION CAN
20 ABSOLUTELY PROTECT SUPIMA FROM THAT RISK.

21 AND, OF COURSE, AS YOUR HONOR NOTED WITH
22 RESPECT TO THE TWO ISSUES WE'RE ARGUING, THE ONLY
23 REASON SUPIMA IS NOT HERE IS BECAUSE, IF THEY WERE
24 HERE, THEY CLEARLY WOULD GO TO ARBITRATION. AND WE
25 WOULD GO ALONG WITH THEM. AND TRADELINE HAS ADMITTED

1 AS MUCH BY DEMANDING ARBITRATION FROM SUPIMA.

2 SO WITH RESPECT TO THE MOTION TO COMPEL
3 ARBITRATION, YOUR HONOR, WE'LL BRIEF THOSE CASES.

4 THE COURT: AND I WANT TO BE CLEAR, I WANT YOU
5 TO LOOK AT THOSE CASES. AND I -- IF THERE ARE OTHER
6 CASES THAT CITE THOSE CASES THAT EITHER SIDE THINKS ARE
7 RELEVANT, LET ME KNOW.

8 MR. DUCKERS: WE WILL SCORCH THE EARTH, YOUR
9 HONOR. OR AT LEAST WEST LAW, MAYBE NOT THE WHOLE
10 EARTH.

11 THE COURT: THAT'S FINE. NOT THE WHOLE EARTH.

12 BUT, TO BE CLEAR, I ALREADY -- WHAT I'M
13 LOOKING FOR IS INCISIVE ANALYSIS. I ALREADY KNOW THAT
14 THE PLAINTIFF IS GOING TO TELL ME THAT
15 WHOLESALE SUPERSEDES PRM, AND WHOLESALE IS AN ANTITRUST
16 CASE, AND THAT'S ALL THERE IS TO IT.

17 MR. DUCKERS: YOU NEED AN ANALYSIS OF THE
18 FACTS AS IT APPLIES TO THOSE CASES.

19 THE COURT: I WANT TO KNOW HOW YOU EACH
20 ANALYZE THESE CASES.

21 MR. DUCKERS: AND YOUR QUESTION TO
22 MR. SUPRENTANT JUST A FEW MOMENTS AGO IS PRECISELY THE
23 TRACK WE'RE ON WHERE YOU ASKED HIM, "IF THE LICENSE HAD
24 NEVER BEEN TERMINATED, WOULD THERE BE A CAUSE OF
25 ACTION?" AND THAT REALLY GOES TO THE EXACT HEART OF

1 THE MATTER. THIS IS ALL ABOUT THE SUPIMA LICENSE
2 TERMINATION. EVERYTHING ABOUT THIS CASE IS INTEGRALLY
3 INTERTWINED WITH THAT LICENSE AND ITS REVOCATION.

4 YOU'RE QUITE CORRECT, YOUR HONOR, THIS
5 DISPARAGEMENT NOTION THAT'S EXPRESSED MAY BE SOME SORT
6 OF CAUSE OF ACTION, BUT IT'S NOT A SECTION 1 OF A
7 SHERMAN ACT CAUSE OF ACTION AS TO ANY OF THESE
8 DEFENDANTS.

9 I WOULD JUST SAY, YOUR HONOR -- AND WE'LL
10 BRIEF THAT.

11 I WOULD ASK THE COURT IF YOU WOULD BE
12 WILLING TO TAKE ANOTHER LOOK AT THE ARBITRATION
13 PROVISION IN THE JESS SMITH CONTRACTS. IT IS NOT
14 LIMITED, YOUR HONOR. THAT PROVISION SAYS ANY DISPUTE
15 GOES TO THE ICA. AND I KNOW THEY CITED YOU SOME
16 CASES --

17 THE COURT: THERE'S THIS LONG, HARD TO READ
18 BECAUSE IT'S SMALL, PARAGRAPH. IT'S JUST GOT ALL OF
19 THESE THINGS IN IT. AND ONE OF THE PHRASES IS ABOUT
20 ARBITRATION. IT'S NOT LIKE A SEPARATE ARBITRATION
21 CLAUSE.

22 MR. DUCKERS: WELL, IT'S AN ARBITRATION CLAUSE
23 THAT WAS INVOKED AND USED BY THE PLAINTIFF.

24 THE COURT: WELL, YES, AS TO A DISPUTE OVER A
25 PARTICULAR SALE -- PURCHASE AND SALE OF GOODS.

1 MR. DUCKERS: SO YOU'VE GOT TWO ISSUES. IS IT
2 A VALUED ARBITRATION CLAUSE? YES, IT IS. IT HAS BEEN
3 USED.

7 THE CASES THAT WERE CITED TO YOU BY THE
8 PLAINTIFF ALL INVOLVE LIMITING LANGUAGE WHERE THE COURT
9 HELD THAT ARBITRATION WAS JUST LIMITED TO ISSUES THAT
10 AROSE UNDER THE CONTRACT. THAT'S NOT THE CASE HERE,
11 YOUR HONOR.

12 THIS IS AN AGREEMENT BY TRADELINE -- AND
13 BEAR IN MIND TOO, YOUR HONOR, THESE ARE INTERNATIONAL
14 CONTRACTS. THE COTTON BUSINESS IS INTERNATIONAL. THE
15 FACT THAT PARTIES WOULD AGREE TO HAVE THEM ARBITRATED
16 IN LONDON BEFORE AN INTERNATIONAL TRIBUNAL WITH
17 EXPERTISE IN THE COTTON INDUSTRY IS PERFECTLY LOGICAL.
18 IT IS -- AND SO WHAT YOU REALLY HAVE, IF YOU READ
19 TRADELINE'S OPPOSITION TO THE MOTION TO COMPEL
20 ARBITRATION UNDER THE JESS SMITH CONTRACTS, IS AN
21 ARGUMENT IN WHICH THEY SAY, "WELL, YES, WE AGREED TO
22 ARBITRATE ANY DISPUTE. BUT NOW THAT WE WANT TO BRING
23 AN ANTITRUST CASE IN FRONT OF A JURY IN LOS ANGELES, WE
24 DON'T LIKE THAT SO MUCH, AND YOU SHOULD CONCLUDE THAT
25 THAT'S NOT WHAT WE EVER INTENDED TO DO." BUT THEY

1 DON'T CITE ANY AUTHORITY FOR ANY OF THOSE ARGUMENTS.
2 AND IT'S SIMPLY AN AFTER-THE-FACT ATTEMPT BY THE
3 PLAINTIFF TO SAY, "HEY, NOW THAT WE LOOK AT IT AGAIN,
4 WE DIDN'T REALLY MEAN TO DO THIS." BUT THEY DID IT.

5 THE COURT: JUST A MINUTE.

6 DO YOU KNOW WHERE IN THE RECORD THAT
7 ARBITRATION AGREEMENT IS ATTACHED AS AN EXHIBIT?

8 MR. DUCKERS: YOUR HONOR, IT WOULD BE ATTACHED
9 TO THE DECLARATION OF ERNIE SCHROEDER, WHICH WAS FILED
10 IN SUPPORT OF THE MOTION TO COMPEL ARBITRATION.

11 IF YOU'LL GIVE ME A SECOND, I'LL GO OVER
12 TO THE NOTEBOOK AND SEE IF I CAN FIND IT EXACTLY.

13 THE COURT: IS IT DOCKET 18?

14 MR. DUCKERS: DOCUMENT 18 IS THAT DECLARATION.

15 THE COURT: WELL --

16 MR. DUCKERS: BUT I'M ACTUALLY NOT SURE -- I'M
17 ACTUALLY NOT SURE I'M SEEING -- I SEE.

18 YOUR HONOR, IT'S ACTUALLY -- IT'S
19 DOCUMENT 18.

20 AND THE SALES CONTRACTS, YOUR HONOR,
21 EXHIBIT A, B, C AND D TO DOCUMENT 18.

22 THE COURT: I'M LOOKING AT DOCUMENT 18-3,
23 WHICH IS ONE OF THOSE EXHIBITS. IT'S THE NOVEMBER 12,
24 2010 AGREEMENT, AMENDED NOVEMBER 16, 2010.

25 DO YOU HAVE THAT? IT SAYS "SALES

1 CONTRACT. "

2 MR. DUCKERS: I COULDN'T QUITE HEAR YOU, YOUR
3 HONOR?

4 THE COURT: DOCUMENT 18-3 IS DATED -- IT'S
5 CALLED "SALES CONTRACT," JESS SMITH & SONS COTTON LLC,
6 SALES CONTRACT, NOVEMBER 12, 2010, AMENDED NOVEMBER 16,
7 2010.

8 DO YOU HAVE THAT?

9 MR. DUCKERS: LET ME FIND THAT, YOUR HONOR.

10 I HAVE -- I HAVE 18-3.

11 THE COURT: OKAY. AND THEN UNDER WHERE IT
12 SAYS "REMARKS," DO YOU HAVE THAT?

13 MR. DUCKERS: I'M LOOKING AT IT, YOUR HONOR.

14 THE COURT: SO DO YOU HAVE WHERE IT SAYS UNDER
15 "REMARKS," ALL THAT TEXT AND ALL CAPITAL LETTERS?

16 MR. DUCKERS: YES, YOUR HONOR. I SEE THAT.

17 THE COURT: AND ABOUT MIDWAY DOWN, THERE'S A
18 LINE THAT BEGINS, "THE ORIGINAL SALES CONTRACT,"
19 PERIOD, AND THEN, "SELLER'S OPTION TO SELECT."

20 MR. DUCKERS: RIGHT.

21 THE COURT: THAT'S THE ARBITRATION CLAUSE TO
22 WHICH YOU'RE REFERRING; CORRECT?

23 MR. DUCKERS: IT'S THE ARBITRATION CLAUSE IN
24 THIS CONTRACT, YOUR HONOR. YES, IT IS.

25 AND UP ABOVE WHERE IT SAYS,

1 "ARBITRATION," IT ALSO SAYS, "THIS CONTRACT IS GOVERNED
2 IN ITS ENTIRETY BY THE RULES AND REGULATIONS OF THE
3 INTERNATIONAL COTTON ASSOCIATION UNDER ENGLISH LAW AND
4 JURISDICTION."

5 THE COURT: THAT WOULD BE HOW THE -- THAT
6 WOULDN'T BE ABOUT THE SCOPE OF THE ARBITRATION. THAT
7 WOULD BE THE PROCESS OF ARBITRATION?

8 MR. DUCKERS: THAT'S CORRECT, YOUR HONOR.

9 AND IT'S IMPORTANT TO DISTINGUISH "SCOPE"
10 FROM "PROCESS," AS WE POINTED OUT.

11 THE COURT: OKAY.

12 MR. DUCKERS: BUT WE WILL DO THE SUPPLEMENTAL
13 BRIEFING THAT YOUR HONOR HAS REQUESTED.

14 THANK YOU.

15 MR. WOODS: BRIEFLY, YOUR HONOR?

16 THE COURT: YES. GO AHEAD.

17 OH, SORRY, YOU HAVE SOMETHING TO ADD?

18 MR. WOODS: YES, I DO.

19 THE COURT: I DIDN'T MEAN TO --

20 MR. WOODS: JUST ONE ADDITIONAL POINT, YOUR
21 HONOR, EVEN THOUGH IT'S NOT OUR MOTION. BUT ON THE
22 QUESTION YOU ASKED ABOUT INDISPENSABLE PARTY, ONE OTHER
23 THING TO CONSIDER IS, IN ANALYZING A POSSIBLE INJURY TO
24 SUPIMA, THE PRAYER OF THE COMPLAINT, PARAGRAPH 1, ASKS
25 FOR A FINDING THAT THE DEFENDANTS AND OTHERS,

1 INCLUDING, I PRESUME, THE ALLEGED CO-CONSPIRATOR,
2 VIOLATES SECTION 1 OF THE SHERMAN ACT. AND SO THERE
3 WOULD BE -- WHETHER IT IS ENTITLED TO COLLATERAL
4 ESTOPPEL EFFECT OR NOT, A COURT JUDGMENT THAT THE
5 SUPIMA ASSOCIATION AS A CO-CONSPIRATOR WITH OTHER
6 DEFENDANTS VIOLATED SECTION 1, I WOULD ASSUME THAT THE
7 SUPIMA ASSOCIATION WOULD BELIEVE THAT TO BE AN INJURY
8 TO IT.

12 MR. WOODS: I DON'T KNOW, YOUR HONOR. BUT I
13 ASSUME THAT THAT WOULD CONSTITUTE SOME FORM OF INJURY
14 TO THE SUPIMA ASSOCIATION.

15 THE COURT: OKAY. JUST A MINUTE. WE HAVE A
16 TECHNICAL DIFFICULTY.

17 | (PAUSE IN THE PROCEEDINGS)

18 THE COURT: OKAY. ANYTHING FURTHER?

19 GO AHEAD, PLEASE.

20 MR. WOODS: JUST A FOLLOW-UP THOUGHT TO YOUR
21 QUESTION ABOUT THE APPLE CASE. WHILE COUNSEL FOR
22 PLAINTIFF IS POSSIBLY STIPULATING THAT A JUDGMENT
23 AGAINST THE DEFENDANTS THAT WOULD NOT HAVE RES JUDICATA
24 OR COLLATERAL ESTOPPEL EFFECT AGAINST SUPIMA
25 ASSOCIATION, THAT'S NOT TO SAY THAT OTHERS IN THE

1 MARKET MIGHT NOT USE IT THAT WAY OR ATTEMPT TO USE IT
2 THAT WAY.

3 BUT WE'RE HAPPY TO BRIEF THE ARBITRATION
4 ISSUE, YOUR HONOR.

5 I WOULD POINT OUT ONE THING. WE'RE HAPPY
6 TO ANALYZE THESE CASES BECAUSE OUR CLIENT, J.G.
7 BOSWELL, IS IN A VERY UNIQUE SITUATION HERE. AND
8 COUNSEL'S OWN ARGUMENT ABOUT THE AMERICAN BANKERS CASE
9 SHOWS WHY THIS CASE SHOULD BE IN ARBITRATION AS TO OUR
10 CLIENT. WHAT COUNSEL SAID WAS, THAT THE HOLDING
11 REQUIRES THAT THE UNDERLYING CONTRACT INVOLVED ALLEGED
12 BREACHES OF OBLIGATIONS AND DUTIES UNDER THE CONTRACT
13 IN ORDER FOR IT TO BE ARBITRATED. AND THAT'S EXACTLY
14 WHAT THE COMPLAINT ALLEGES AGAINST OUR CLIENT.

15 THE COMPLAINT ALLEGES THAT THE SUPIMA
16 ASSOCIATION BREACHED THE LICENSE AGREEMENT IN MANY
17 DIFFERENT WAYS, ALL OF WHICH ARE PARTICULARIZED.

18 IT THEN ALLEGES, AND THE ONLY BASIS FOR
19 THE COMPLAINT AGAINST OUR CLIENT IS THAT A
20 REPRESENTATIVE OF OUR CLIENT WAS THE CHAIRMAN OF THE
21 BOARD OF THE ASSOCIATION DURING THE RELEVANT TIME AND
22 STEERED, GUIDED AND CONTROLLED THE ASSOCIATION TO STRIP
23 TRADELINE OF ITS LICENSE IN VIOLATION OF THAT
24 AGREEMENT. AND SO THAT WILL BE THE ARGUMENT TO SHOW
25 WHY OUR MOTION TO STAY THE CASE PENDING ARBITRATION

1 SHOULD BE GRANTED.

2 AND WE LOOK FORWARD TO BRIEFING THAT --

3 THE COURT: FOCUS ON THAT WHEN YOU DISCUSS THE
4 BRIEFING IN TERMS OF HOW THE EIGHTH CIRCUIT
5 DISTINGUISHED THE TWO CASES. I WANT TO HEAR FROM YOU
6 ON THAT. AGAIN, YOU HAVEN'T READ THE CASES, SO I DON'T
7 WANT TO GET INTO IT YET.

8 MR. WOODS: WE WILL, YOUR HONOR. THANK YOU.

9 MR. SUPRENANT: BRIEFLY, YOUR HONOR?

10 WITH RESPECT TO THE NECESSARY PARTY
11 MOTION, WE WERE TOLD BY JESS SMITH'S COUNSEL HOW
12 IMPORTANT THIS CASE -- HOW RISKY AND THREATENING THIS
13 CASE IS TO THE ASSOCIATION. THERE'S NOT A LAWYER FROM
14 THE SUPIMA ASSOCIATION HERE. THEY DIDN'T FILE A
15 DECLARATION.

16 IN WARD VERSUS APPLE - AND WE ARGUED THIS
17 IN OUR OPPOSITION - IT SAID THAT THE FIRST STEP
18 REQUIRES IDENTIFYING THE SPECIFIC INTEREST THE ABSENT
19 PARTY CLAIMS. THERE'S BEEN NO CLAIM BY SUPIMA
20 ASSOCIATION THAT THEY HAVE ANY INTEREST. THAT IS AT
21 791 F.3D. 1049.

22 "JOINDER" -- THIS IS A QUOTE, "JOINDER IS
23 CONTINGENT UPON AN INITIAL REQUIREMENT THAT THE ABSENT
24 PARTY CLAIM A LEGALLY-PROTECTED INTEREST." THAT'S AT
25 1051. AND SO YOUR HONOR HAS NO SHOWING WHATSOEVER THAT

1 THE ASSOCIATION REQUIRES -- I MEAN, HAS CLAIMED AN
2 INTEREST.

3 IN THE REPLY, THEY CITE TWO CASES
4 INVOLVING NATIVE-AMERICAN TRIBAL SOVEREIGNS WHO DID NOT
5 APPEAR. BUT WHAT THE COURT SAID IS, "AS SOVEREIGNS,
6 THEY DON'T HAVE TO APPEAR" AND FOUND THAT THEY WERE
7 NECESSARY PARTIES.

8 SO THE MOTION FAILS JUST AT THE OUTSET
9 BECAUSE SUPIMA HAS NOT CLAIMED ANY PROTECTED INTEREST.

10 EVEN IF THEY HAD --

11 THE COURT: DO YOU CONTEND THAT APPLE STANDS
12 FOR THE PROPOSITION THAT THEY HAVE TO SUBMIT EVIDENCE?

13 MR. SUPRENANT: NO. BUT THEY HAVE TO COME
14 FORWARD AND SAY, "YOUR HONOR, I REPRESENT SUPIMA
15 ASSOCIATION. I HAVE READ THE COMPLAINT, AND THESE ARE
16 REASONS THAT WE THINK" --

17 THE COURT: I SEE.

18 AND THAT ARGUMENT CAN'T BE ADVANCED BY
19 ANOTHER PARTY WHO IS A MEMBER OF THE ASSOCIATION?

20 MR. SUPRENANT: NOT AS I READ WARD. IT
21 SAYS --

22 THE COURT: IN WARD, THERE WAS NO
23 RELATIONSHIP, OTHER THAN CONTRACTUAL, BETWEEN APPLE AND
24 AT&T; CORRECT?

25 MR. SUPRENANT: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: AND, HERE, THERE IS A RELATIONSHIP
2 BECAUSE ONE OF THE CO-DEFENDANTS IS THE -- WAS OR IS
3 THE CHAIR OF THE ASSOCIATION.

4 MR. SUPRENANT: WHICH SHOULD HAVE MADE IT
5 EASIER, I WOULD THINK, YOUR HONOR, FOR THEM TO APPEAR
6 AND SAY, "WE ARE" -- OR AT LEAST PUT IN A DECLARATION.
7 THEY DON'T HAVE TO -- THEY DON'T HAVE TO COME HERE, BUT
8 THEY HAVE TO PUT IN A DECLARATION HOW THEIR INTERESTS
9 WOULD BE HARMED BY THIS LITIGATION GOING FORWARD.

10 THE COURT: WELL, THAT WAS MY QUESTION.

11 JUST A SECOND.

12 DEFENDANT NEUFELD IS A BOARD MEMBER. AND
13 DEFENDANT ELDER IS A BOARD MEMBER, WAS THE CHAIR.
14 EITHER -- WHETHER IT'S PRESENT TENSE OR PAST TENSE, IT
15 DOESN'T MATTER. THAT'S WHY I ASKED MY QUESTION A
16 COUPLE OF QUESTIONS AGO.

17 IS IT REQUIRED THAT EVIDENCE BE PRESENTED
18 AS OPPOSED TO ARGUMENT? IS THAT WHAT YOUR POINT IS?

19 MR. SUPRENANT: MY POINT IS, AS I THINK WHAT
20 THEY HAD IN APPLE WAS AN AFFIDAVIT OR A DECLARATION
21 FROM COUNSEL FOR AT&T IDENTIFYING THEIR INTEREST IN THE
22 CASE.

23 AND I DON'T THINK THEY HAVE TO APPEAR
24 AS A --

25 THE COURT: NO, I UNDERSTAND.

1 I JUST WANT TO KNOW WHETHER YOU THINK
2 APPLE STANDS FOR THE PROPOSITION THAT YOU HAVE TO
3 SUBMIT EVIDENCE IN THE FORM OF A DECLARATION AS OPPOSED
4 TO ARGUMENT BASED ON THE ASSOCIATION'S STRUCTURE.

5 MR. SUPRENANT: IT WOULDN'T BE ARGUMENT; BUT
6 IT WOULD SAY, "I'M AUTHORIZED TO SPEAK FOR THE
7 ASSOCIATION" --

8 THE COURT: I UNDERSTAND THAT.

9 THAT'S EVIDENCE, ISN'T IT?

10 IF IT IS A DECLARATION, ISN'T THAT
11 EVIDENCE?

12 MR. SUPRENANT: IT IS, YOUR HONOR. I WAS
13 MISSING YOUR HONOR'S QUESTION.

14 SO IT WOULD REQUIRE A DECLARATION.
15 "EVIDENCE," I WAS THINKING LIKE ATTACH EXHIBITS AND
16 STUFF. IT SIMPLY HAS TO IDENTIFY THE INTEREST IT HAS.

17 BUT WHAT THEY FOUND IN APPLE, OF COURSE,
18 IS THAT JOINT TORTFEASORS ARE JOINT AND SEVERAL
19 LIABILITIES. AND PERMISSIVE PARTIES IS THE HOLDING
20 ABSENT NARROW CIRCUMSTANCES, NOT PRESENT HERE. THAT'S
21 AT 1048.

22 AND THEIR INTEREST IN THE BRAND, YOUR
23 HONOR, IS THE VERY REPUTATIONAL INTEREST THAT WARD SAID
24 DOES NOT COUNT. IT SAYS THAT, "YEAH" -- MR. WOODS'
25 POINT, "YEAH, IF YOU'RE FOUND TO BE A JOINT TORTFEASOR,

1 THAT'S PROBABLY NOT GOING TO BE GOOD FOR YOUR
2 REPUTATION." BUT ABSENT ISSUE PRECLUSION, ABSENT
3 COLLATERAL ESTOPPEL, THERE IS NO BASIS.

4 BUT LET ME MOVE ON, YOUR HONOR, UNLESS
5 YOUR HONOR HAS QUESTIONS, TO THE ARBITRATION ISSUE.

6 THE COURT: BRIEFLY.

7 GO AHEAD.

8 I THINK I UNDERSTAND THE ISSUE.

9 MR. SUPRENANT: OKAY. YOUR HONOR, I --

10 THE COURT: IF THERE'S SOMETHING NEW THAT I
11 HAVEN'T HEARD.

12 LET ME ASK YOU THIS -- WELL, LICENSE
13 RENEWAL, IS THAT A REMEDY YOU MIGHT SEEK?

14 MR. SUPRENANT: WE WILL NOT SEEK, WE DO NOT
15 SEEK -- I SAID IT SEVERAL TIMES IN THE OPPOSITION.

16 OUR SUPIMA BUSINESS -- WE HAVE TWO
17 BUSINESSES. THE TRADELINE HAS BEEN A SPINNER IN INDIA
18 FOR THREE GENERATIONS.

19 BEGINNING IN 2008, IT SPENT \$10 MILLION
20 TO START A SUPIMA EXTRA-LONG STAPLE FACTORY. THAT
21 HAS -- THAT BUSINESS HAS BEEN DESTROYED. WE'RE SEEKING
22 MONEY DAMAGES. WE'RE NOT SEEKING THE LICENSE. WE WILL
23 NOT SEEK THE LICENSE. THAT IS SIMPLY AN ARGUMENT THAT
24 DEFENDANTS --

25 THE COURT: DO YOU HAVE A VIEW ON THE OTHER

1 ISSUE THAT WAS RAISED?

2 AND THAT IS, AS TO A NON-PARTY TO THE
3 LITIGATION, IF THERE WERE ANOTHER SPINNER OR OTHER
4 PARTY, NOT TO THE -- PARTY TO THE LITIGATION, AND THE
5 LITIGATION WENT TO JUDGMENT ADVERSE TO THE SUPIMA
6 ASSOCIATION, COULD THAT NON-PARTY ASSERT COLLATERAL
7 ESTOPPEL EVEN IF PLAINTIFFS HERE HAD FOREGONE THAT
8 OPPORTUNITY WITH RESPECT TO DAMAGES?

9 MR. SUPRENANT: THE REASON -- NO, YOUR HONOR.
10 THE ANSWER IS, NO.

11 AND THE REASON THAT WE'LL STIPULATE THAT
12 THEY'RE NOT GOING TO BE BOUND IS, THEY WOULDN'T. UNDER
13 THE LAW, THEY WOULDN'T BE BOUND BECAUSE THEY'RE NOT
14 HERE REPRESENTED.

15 AND, MOREOVER, THE NATURE OF THIS
16 CONSPIRACY IS TARGETED RIGHT AT OUR CLIENT.

17 IN OTHER WORDS, THERE'S NOBODY WHO CAN
18 COME UNDER THE UMBRELLA AND SAY, "ME TOO." THAT'S NOT
19 THE NATURE OF THE CONSPIRACY.

20 THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT. LET ME TURN TO THE
22 SCHEDULING ISSUES.

23 DO YOU EACH HAVE THE EXHIBIT A TO YOUR
24 REPORT?

25 MR. SUPRENANT: YES, YOUR HONOR.

1 MR. DUCKERS: YES, YOUR HONOR.

2 MR. WOODS: YES, YOUR HONOR.

3 MR. DUCKERS: THAT'S THE TIMETABLE, YOUR
4 HONOR?

5 THE COURT: CORRECT.

6 HERE ARE THE DATES THAT I HAVE IN MIND
7 HAVING REVIEWED YOUR REPORT:

8 LAST DATE TO ADD PARTIES OR AMEND
9 PLEADINGS, JUNE 30, 2016.

10 NON-EXPERT DISCOVERY CUTOFF, FEBRUARY 10,
11 2017.

12 EXPERT DISCLOSURE, IF ANY, FEBRUARY 24,
13 2017.

14 EXPERT REBUTTAL, IF ANY, MARCH 10, 2017.

15 COMPLETE EXPERT DISCOVERY, MARCH 24,
16 2017.

17 LAST DATE TO FILE MOTIONS, MARCH 27,
18 2017.

19 LAST DATE TO HEAR THEM, JUNE 19, 2017.

20 ANTICIPATED RULINGS, JULY 17, 2017.

21 FINAL PRETRIAL CONFERENCE AUGUST 28,
22 2017.

23 AND TRIAL, SEPTEMBER 12, 2017.

24 IN TERMS OF TRIAL LENGTH, IT'S TOO EARLY
25 TO TELL. BUT YOU ARE GOING TO HAVE TO DO SOME SERIOUS

1 PERSUADING TO PERSUADE ME THAT THIS A MONTH-LONG TRIAL,
2 WHICH IS WHAT 15 DAYS WOULD MEAN. BUT THAT'S NOT --

3 MR. SUPRENANT: WHAT WAS THE TRIAL DATE AGAIN,
4 YOUR HONOR?

5 THE COURT: SEPTEMBER 12, 2017.

6 THERE'S SOME -- A LITTLE BIT OF A GAP IN
7 SOME OF THIS BECAUSE I'M ANTICIPATING -- I MAY BE AWAY
8 IN PART OF THE SUMMER.

9 IT'S DIFFERENT -- IT'S NOT EXACTLY WHAT
10 EITHER OF YOU SAID.

11 AND I'M MINDFUL OF THE FOLLOWING: THAT
12 WITH RESPECT TO THE NON-EXPERT DISCOVERY, INSOFAR AS
13 THERE MAY BY SOME INTERNATIONAL DISCOVERY INVOLVED
14 HERE, WHETHER PRODUCTION OF DOCUMENTS OR DEPOSITIONS OR
15 BOTH, IT MAY TAKE MORE TIME TO GET THINGS DONE. I
16 RECOGNIZE THAT. SO MY EXPECTATION IS THAT IF -- AGAIN,
17 THIS ALL ASSUMES THAT I DENY THE MOTION TO COMPEL
18 ARBITRATION.

19 MY EXPECTATION IS THAT YOU'LL WORK
20 COLLABORATIVELY. YOUR REPORT SHOWED SOME
21 COLLABORATION, BUT I THINK YOU CAN DO EVEN BETTER. AND
22 TRY TO WORK OUT THESE -- THE DISCOVERY PROCESSES IN A
23 REASONABLE FASHION.

24 IF I'M PERSUADED THAT YOU HAVE DONE THAT,
25 AND THAT YOU JUST CAN'T FINISH BY FEBRUARY 10, 2017

1 BECAUSE IT TOOK -- IT'S GOING TO TAKE "X" MORE DAYS OR
2 WEEKS GIVEN THE INTERNATIONAL NATURE OF WHAT'S
3 HAPPENED, THEN I'LL EVALUATE THAT BASED ON HAPPENED.
4 SO I'M NOT UNMINDFUL OF THAT.

5 MR. SUPRENANT: THESE DATES, YOUR HONOR, ARE
6 ACCEPTABLE TO TRADELINE.

7 THE COURT: MR. DUCKERS?

8 MR. DUCKERS: YOUR HONOR, IF THAT'S WHAT THE
9 COURT'S PREFERENCE IS, IT'S ACCEPTABLE TO US WITH THE
10 CAVEAT YOU HAD.

11 I DO HAVE SOME REAL CONCERN WITH THE
12 INTERNATIONAL DISCOVERY. I DON'T THINK IT'S GOING TO
13 BE SO MUCH AN ISSUE OF COLLABORATION WITH US, BUT
14 HAVING TO GET COLLABORATION FROM FOREIGN GOVERNMENTS,
15 THE HAGUE CONVENTION AND OTHER THINGS, WHICH I'M NOT
16 TERRIBLY FAMILIAR WITH, BUT I UNDERSTAND CAN BE VERY
17 TIME CONSUMING.

18 THE COURT: DO YOU EXPECT THERE WILL BE
19 TRANSLATION ISSUES?

20 ARE THERE DOCUMENTS -- THE PLAINTIFF HAS
21 DOCUMENTS IN A LANGUAGE OTHER THAN ENGLISH, FOR
22 EXAMPLE?

23 MR. SUPRENANT: YOUR HONOR, THERE MAY BE SOME
24 REALLY PRETTY MARGINAL TRANSLATION ISSUES, BUT NOT WITH
25 RESPECT TO MY CLIENT. MY CLIENT CONDUCTS BUSINESS IN

1 ENGLISH.

2 MR. DUCKERS: THERE COULD BE WITH SOME THIRD
3 PARTIES. I KNOW THERE'S --

4 THE COURT: "NON-PARTIES"?

5 MR. DUCKERS: YEAH, JAPANESE COMPANIES AND
6 ALSO A PORTUGUESE COMPANY. THEY E-MAIL IN ENGLISH, BUT
7 WHETHER THE 30(B)(6) FROM THOSE COMPANIES WOULD BE --

8 THE COURT: I UNDERSTAND.

9 WHAT'S YOUR VIEW ON THIS, MR. WOODS, ON
10 THE DATES?

11 MR. WOODS: THE DATES ARE ACCEPTABLE, YOUR
12 HONOR.

13 DID YOU WANT TO SET DATES FOR THE
14 BRIEFING SCHEDULE NEXT?

15 THE COURT: I WANT TO FIRST TALK ABOUT THE
16 SETTLEMENT DATES.

17 FROM YOUR REPORT -- WELL, YOU'RE BOTH
18 PROPOSING THE USE OF AN OUTSIDE NEUTRAL. AND THE
19 DEFENDANTS ARE PROPOSING EARLY NEUTRAL EVALUATION.

20 IS THAT RIGHT?

21 MR. WOODS: YES, YOUR HONOR.

22 THE COURT: IS THAT WHAT YOU'RE ALSO
23 PROPOSING?

24 MR. SUPRENANT: NO, YOUR HONOR.

25 WE BELIEVE -- GIVEN THE SIZE OF THE CASE

1 AND THE VERY STARK DIFFERENT VIEWS, WE THINK IT WILL
2 NOT BE VALUABLE.

3 THE COURT: OKAY. HAVE YOU DONE AN ENE IN
4 ANOTHER CASE?

5 MR. SUPRENANT: YES.

6 I MEAN, FOR EXAMPLE, MR. WOODS PROPOSED A
7 SETTLEMENT THAT HE WOULDN'T SUE ME FOR MALICIOUS
8 PROSECUTION.

9 THE COURT: I DON'T WANT TO HEAR ABOUT --
10 THESE ARE PRIVILEGED COMMUNICATIONS. I DON'T WANT TO
11 HEAR ABOUT THAT. SUBSTANCE OF COMMUNICATIONS AREN'T TO
12 BE DISCLOSED.

13 WHAT I'M GETTING AT IS, EARLY NEUTRAL
14 EVALUATION IS A PROCESS THAT IS DESIGNED TO PROVIDE THE
15 PARTIES WITH EARLY NEUTRAL EVALUATION BASED ON --
16 BEFORE YOU HAVE DONE A HUGE AMOUNT OF WORK. AND
17 IT'S -- IT'S EFFECTIVE IN SOME CASES.

18 IF THAT'S NOT WHAT YOU BOTH WANT TO DO --
19 BECAUSE WHAT THE DEFENDANT HAS PROPOSED IS, YOU DON'T
20 KNOW WHEN A SETTLEMENT CONFERENCE WOULD BE PRODUCTIVE
21 UNTIL WELL AFTER ALL THE MOTIONS ARE DECIDED, I THINK.

22 MR. SUPRENANT: IN MY EXPERIENCE IN THESE
23 KINDS OF CASES, YOUR HONOR, THE DEFENDANTS ARE
24 UNWILLING TO MEANINGFULLY OFFER REMEDIES UNTIL SUMMARY
25 JUDGMENT IS DENIED AND THE DAUBERT MOTIONS ARE DECIDED.

1 THE COURT: WHAT I THINK IS HELPFUL IS WHEN
2 YOU BOTH -- WHAT BOTH SIDES THINK WOULD BE PRODUCTIVE.
3 I DON'T LIKE PEOPLE TO JUST GO TO CONFERENCES TO SHOW
4 UP. SO I WANT YOU TO BOTH -- WHY DON'T YOU -- HAVE YOU
5 DISCUSSED WHOM YOU MIGHT USE AS A PRIVATE NEUTRAL?

6 MR. SUPRENTANT: WE HAVE NOT.

7 MR. DUCKERS: NO, YOUR HONOR.

15 BUT THAT DOESN'T MEAN THAT I'M GOING TO
16 NECESSARILY THINK IT HAS TO BE A YEAR FROM NOW AFTER
17 YOU'VE ALL SPENT A LOT OF MONEY AND I HAVE SPENT A LOT
18 OF TIME WITH YOU, POTENTIALLY, RESOLVING DISPUTES.

19 SO WHY DON'T YOU TALK ABOUT IT SOME MORE
20 AND SEE, IF IN THE CONTEXT OF AGREEING ON A NEUTRAL,
21 WHETHER SOME OTHER DATE WOULD BE SENSIBLE. BECAUSE
22 EVEN IF I WERE TO CONCLUDE THAT THE MATTER SHOULD BE
23 ARBITRATED, YOU -- YOU WOULDN'T LOSE THE BENEFIT OF
24 HAVING A NEUTRAL, WOULD YOU? I THINK NOT.

25 SO WHY DON'T YOU TALK MORE ABOUT THAT.

1 GIVE ME A REPORT AT THE TIME YOU FILE YOUR SUPPLEMENTAL
2 BRIEFS AS TO WHERE YOU STAND ON THIS.

3 MR. DUCKERS: YES, YOUR HONOR.

4 THE COURT: HAVE YOU WORKED TOGETHER ON CASES
5 BEFORE?

6 MR. SUPRENANT: WE HAVE NOT, YOUR HONOR.

7 THE COURT: OKAY. NOW, WITH RESPECT TO THE
8 BRIEFING, WHAT I HAVE IN MIND IS BRIEFS NOT TO EXCEED
9 10 PAGES. I WANT YOU TO BE FOCUSED. I DON'T NEED
10 TO -- YOU HAVE GIVEN ME, ALREADY, LENGTHY BRIEFS ON
11 YOUR RESPECTIVE POSITIONS AS TO THE FACTS. SO I WANT
12 YOU TO FOCUS ON THE CASES -- THE TWO THAT I MENTIONED,
13 OTHERS THAT YOU FIND BASED ON THOSE.

14 AS YOU WILL SEE WHEN YOU LOOK AT THEM, AS
15 YOU'VE READ THE OTHER ONES, THEY REFER TO THE SECOND
16 CIRCUIT CASE. I THINK IT'S THE MERRIL LYNCH CASE.
17 THERE'S SOME OTHER CASES THAT ARE CITED AS SORT OF THE
18 HISTORY. TAKE A LOOK AT THE CASES AND TELL ME YOUR
19 RESPECTIVE VIEWS ON HOW YOU THINK THEY APPLY OR DON'T
20 APPLY HERE.

21 HOW LONG DO YOU THINK YOU NEED TO DO
22 THAT, A WEEK, TWO WEEKS?

23 MR. SUPRENANT: A WEEK WOULD BE FINE, YOUR
24 HONOR.

25 THE COURT: A WEEK, THAT WORK?

1 MR. DUCKERS: I THINK A WEEK WORKS, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. FILE THEM NEXT
4 WEDNESDAY -- NEXT MONDAY.

5 IF, WHEN YOU DIG INTO THESE CASES, YOU
6 CONCLUDE THAT YOU NEED 10 DAYS, NOT 7 DAYS, THEN JUST
7 SEND -- SUBMIT A STIPULATION. IT'S NOT MATERIAL TO ME
8 WHETHER IT'S 7 DAYS OR 10 DAYS.

9 WHEN YOU SUBMIT THE -- THE BRIEFS ARE DUE
10 NEXT MONDAY, PROVIDED, HOWEVER, IF THE PARTIES AGREE TO
11 SUBMIT THEM NEXT WEDNESDAY, YOU CAN DO THAT.

12 MR. DUCKERS: YOUR HONOR, CAN WE JUST MAKE
13 THEM NEXT WEDNESDAY?

14 THE COURT: LET'S MAKE IT NEXT WEDNESDAY.

15 AT THE SAME TIME BY NEXT WEDNESDAY, GIVE
16 ME AN UPDATE ON THE SETTLEMENT PROCESS ONLY.

17 ANYTHING ELSE WE NEED TO DO TODAY?

18 MR. SUPRENANT: NOT FROM US, YOUR HONOR.

19 MR. DUCKERS: NO, YOUR HONOR.

20 MR. WOODS: NO, YOUR HONOR.

21 THE COURT: THANK YOU.

22 I'LL ISSUE A WRITTEN RULING WITH RESPECT
23 TO THE MOTIONS AFTER I -- I'LL TAKE THEM UNDER
24 SUBMISSION AFTER I RECEIVE YOUR SUPPLEMENTAL BRIEFING.

25 MR. SUPRENANT: THANK YOU, YOUR HONOR.

1 THE COURT: THANK YOU.

2 (END OF PROCEEDINGS)

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

I, ALEXANDER T. JOKO, FEDERAL OFFICIAL
COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT
COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY
CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED
STATES CODE, THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS
HELD IN THE ABOVE-ENTITLED MATTER, AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED
STATES.

DATE: AUGUST 29, 2018

/S/ ALEXANDER T. JOKO

ALEXANDER T. JOKO, CSR NO. 12272
FEDERAL OFFICIAL COURT REPORTER

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